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9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
13 Against:

Case No. 800-2018-048806

**FIRST AMENDED ACCUSATION**

14 **AHIMSA PORTER SUMCHAI, M.D.**  
15 **236 West Portal Avenue, #563**  
**San Francisco, CA 94127**

16 **Physician's and Surgeon's Certificate**  
17 **No. G 48983,**

18 Respondent.

19  
20 **PARTIES**

- 21 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his  
22 official capacity as the Executive Director of the Medical Board of California, Department of  
23 Consumer Affairs (Board).
- 24 2. On or about September 27, 1982, the Board issued Physician's and Surgeon's  
25 Certificate Number G 48983 to Ahimsa Porter Sumchai, M.D. (Respondent). The Physician's and  
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on May 31, 2022, unless renewed.

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## JURISDICTION

3. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2228 of the Code states:

The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

6. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

1 (1) An initial negligent diagnosis followed by an act or omission medically  
2 appropriate for that negligent diagnosis of the patient shall constitute a single  
3 negligent act.

4 (2) When the standard of care requires a change in the diagnosis, act, or  
5 omission that constitutes the negligent act described in paragraph (1), including, but  
6 not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
7 licensee's conduct departs from the applicable standard of care, each departure  
8 constitutes a separate and distinct breach of the standard of care.

9 (d) Incompetence.

10 (e) The commission of any act involving dishonesty or corruption that is  
11 substantially related to the qualifications, functions, or duties of a physician and  
12 surgeon.

13 (f) Any action or conduct that would have warranted the denial of a certificate.

14 (g) The failure by a certificate holder, in the absence of good cause, to attend  
15 and participate in an interview by the board. This subdivision shall only apply to a  
16 certificate holder who is the subject of an investigation by the board.

17 7. Section 2242 of the Code states, in pertinent part:

18 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in  
19 Section 4022 without an appropriate prior examination and a medical indication,  
20 constitutes unprofessional conduct. An appropriate prior examination does not  
21 require a synchronous interaction between the patient and the licensee and can be  
22 achieved through the use of telehealth, including, but not limited to, a self-screening  
23 tool or a questionnaire, provided that the licensee complies with the appropriate  
24 standard of care.”

25 8. Section 2266 of the Code states: The failure of a physician and surgeon to maintain  
26 adequate and accurate records relating to the provision of services to their patients constitutes  
27 unprofessional conduct.

28 9. Section 2290.5 of the Code states, in pertinent part:

(a) For purposes of this division, the following definitions shall apply:

\* \* \*

(6) “Telehealth” means the mode of delivering health care services and public  
health via information and communication technologies to facilitate the diagnosis,  
consultation, treatment, education, care management, and self-management of a  
patient's health care. Telehealth facilitates patient self-management and caregiver  
support for patients and includes synchronous interactions and asynchronous store  
and forward transfers.

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1 (b) Before the delivery of health care via telehealth, the health care provider  
2 initiating the use of telehealth shall inform the patient about the use of telehealth and  
3 obtain verbal or written consent from the patient for the use of telehealth as an  
4 acceptable mode of delivering health care services and public health. The consent  
5 shall be documented.

6 (c) This section does not preclude a patient from receiving in-person health care  
7 delivery services during a specified course of health care and treatment after agreeing  
8 to receive services via telehealth.

9 (d) The failure of a health care provider to comply with this section shall  
10 constitute unprofessional conduct. Section 2314 shall not apply to this section.

11 (e) This section shall not be construed to alter the scope of practice of any  
12 health care provider or authorize the delivery of health care services in a setting, or in  
13 a manner, not otherwise authorized by law.

14 (f) All laws regarding the confidentiality of health care information and a  
15 patient's rights to the patient's medical information shall apply to telehealth  
16 interactions.

17 (g) All laws and regulations governing professional responsibility,  
18 unprofessional conduct, and standards of practice that apply to a health care provider  
19 under the health care provider's license shall apply to that health care provider while  
20 providing telehealth services. . . ."

21 10. Section 123149.5 of the Health and Safety Code states:

22 (a) It is the intent of the Legislature that all medical information transmitted during the  
23 delivery of health care via telehealth, as defined in subdivision (a) of Section 2290.5 of the  
24 Business and Professions Code, become part of the patient's medical record maintained by  
25 the licensed health care provider.

26 (b) This section shall not be construed to limit or waive any of the requirements of  
27 Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and  
28 Safety Code.

### COST RECOVERY

11. Effective January 1, 2022, Section 125.3 of the Code provides, in pertinent part, that  
the Board may request the administrative law judge to direct a licensee found to have committed  
a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
investigation and enforcement of the case, with failure of the licensee to comply subjecting the  
license to not being renewed or reinstated. If a case settles, recovery of investigation and  
enforcement costs may be included in a stipulated settlement.

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**FACTUAL ALLEGATIONS**

12. On October 10, 2018, the Board received a complaint from CVS Health alleging that Respondent was prescribing multiple expensive dermatological creams to patients in New York State who claimed to have had no contact with Respondent.

13. During the Board's investigation of the CVS Health complaint, Respondent provided the following information:

a. In or about January 2018, Respondent met by teleconference with two men (KK and FM) who were executives/partners of Pharmsource, Inc. and who sought out Respondent to assist with the building and expanding of their telehealth platform. For her services from January 2018 to September 2018, Respondent was paid a monthly stipend of \$2,000.

b. In January 2018, Respondent agreed to review for Pharmsource medical records and audiotapes of interviews, conducted by physician extenders, of patients who were seeking prescriptions for topical creams, for which payments would be covered by Medicare and third party insurers.

c. Respondent most commonly prescribed lidocaine 5%, diclofenac 3%, doxepin hydrochloride 5% (for neuropathy), or fluocinonide cream 0.1%, for scars/keloids and for skin management for eczema and psoriasis. It was her standard practice to issue three refills for each prescription.

d. Starting in January 2018 until about September 1, 2018, Pharmsource's executive KK would send to Respondent, via e-mail message, three separate digital files for each patient to be reviewed:

(1) A form with a patient medical record and history, which included boxes to be checked, that included patient insurance information, medical history, chief complaint and treatment plan, including the "items" [prescription medications] that were requested;

(2) A pre-printed prescription form with several options for topical creams; and,

(3) An audio recording of an interview of the patient by someone asking scripted questions and reviewing the information on the patient's submitted form.

1 e. Respondent did not know the person who was asking the questions in the patient  
2 interview but she believes that it was a medical assistant in New York. The audio interviews  
3 lasted an average of one minute and the same questions were always asked.

4 f. After she reviewed the three attachments in the email received from Pharmsource, she  
5 would complete a prescription or prescriptions, usually for lidocaine 5% ointment with three  
6 refills, and send a facsimile (FAX) copy directly to FM at Metro Drugs, Inc., a pharmacy  
7 associated with Pharmsource.

8 g. Before issuing the prescriptions, Respondent did not see and examine the patients,  
9 either in person or by video-conference. All of the patients for whom she wrote prescriptions  
10 through Pharmsource resided in the State of New York.

11 h. Respondent received and reviewed approximately 8 – 10 patients' files per day.

12 i. Respondent is not licensed to practice medicine in New York.

13 j. In or about mid-May 2018, after "major irregularities occurred" with the transmittal  
14 of prescriptions, Respondent would complete and sign prescriptions and then send them directly  
15 via Federal Express (FedEx) to Metro Drugs, Inc.

16 k. Until about May 2018, Respondent maintained hard copies of only the "problem  
17 charts." After her April 2018 charts were destroyed because of water damage, she maintained  
18 digital files of only the "problem charts." In 2020, she was forced to delete some of those  
19 archived files when her Comcast account reached capacity.

20 l. In or about June 2018, Respondent received information about complaints that "OTC  
21 [over-the counter] medications" that she prescribed were shipped to patients and/or family  
22 members who denied having requested or consented to receiving them.

23 m. On or about August 1, 2020, Respondent gave Pharmsource a 30-days' notice that she  
24 was terminating her employment effective September 1, 2020.

25 n Respondent received information that Metro Drugs pharmacy closed in or about  
26 September 2018 and that KK of Pharmsource had left the country.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Gross Negligence, Prescribing Without Appropriate Exam,**  
3 **Lack of Consent for Telehealth re: Patient A<sup>1</sup>)**

4 14. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
5 unprofessional conduct with regard to acts and omissions in the treatment of Patient A, under  
6 section 2234(b) for gross negligence and/or section 2242 for prescribing dangerous drugs without  
7 an appropriate prior examination and a medical indication and/or section 2290.5 for lack of  
8 documented consent to telehealth, as set forth herein:

9 15. Paragraphs 12 through 13 are incorporated herein by reference, as if fully set forth.

10 16. On or about February 27, 2018, Respondent issued and sent, by FAX directly to  
11 Metro Drugs Inc., two prescriptions (each with three refills) for Patient A, a male born in July  
12 1949 who resided in New York. Prescription No. 0101092 was for lidocaine 5%<sup>2</sup> and  
13 Prescription No. 0101093 was for diclofenac sodium 3%<sup>3</sup>.

14 17. Respondent's records for Patient A consist only of a copy of the one-page pre-printed  
15 form with the prescription issued to Patient A. There is no documentation of Patient A's medical  
16 history, the patient's complaint(s), a consent to telehealth, obtaining the patient's informed  
17 consent, and/or of an appropriate physical examination.

18 18. According to other prescribing records, Respondent's Prescription Nos. 0101092 and  
19 0101093 for Patient A were re-filled on March 2, 2018 and on April 16, 2018.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Gross Negligence, Prescribing Without Appropriate Exam,**  
22 **Lack of Consent for Telehealth re: Patient B)**

23 19. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
24 unprofessional conduct with regard to acts and omissions in the treatment of Patient B, under

25 <sup>1</sup> To protect the privacy rights of the patients, they will be referred to with a letter  
26 designation. Respondent will be provided with the names of the patients through discovery.

27 <sup>2</sup> Lidocaine 5% is a topical local anesthetic used to temporarily numb and relieve pain. It  
comes as a cream, ointment or a skin patch. It is available through a prescription and, after  
October 2019, is also available over-the counter (OTC).

28 <sup>3</sup> Diclofenac sodium 3% is a nonsteroidal anti-inflammatory topical drug used to treat a  
certain skin condition: actinic keratosis. It is available only through a prescription.

1 section 2234(b) for gross negligence and/or section 2242 for prescribing dangerous drugs without  
2 an appropriate prior examination and a medical indication and/or section 2290.5 for lack of  
3 documented consent to telehealth, as set forth herein:

4 20. Paragraphs 12 through 13 are incorporated herein by reference, as if fully set forth.

5 21. On or about July 26, 2018, Respondent issued Prescription No. 0106479 (with refills)  
6 for Patient B, a female born in 1948 and a resident of New York. The prescription was for  
7 lidocaine 5%.

8 22. Respondent has no medical records for Patient B, only a partial list of names of  
9 patients to whom she issued prescriptions that contains the name of Patient B. Respondent has no  
10 record of the details of the prescription for Patient B and there is no documentation of Patient B's  
11 medical history, the patient's complaint(s), a consent to telehealth, obtaining the patient's  
12 informed consent, and/or of an appropriate physical examination.

13 23. According to other prescribing records, Respondent's Prescription No. 010649 for  
14 Patient B was re-filled on August 29, 2018.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Gross Negligence, Prescribing Without Appropriate Exam,  
17 Lack of Consent for Telehealth re: Patient C)**

18 24. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
19 unprofessional conduct with regard to acts and omissions in the treatment of Patient C, under  
20 section 2234(b) for gross negligence and/or section 2242 for prescribing dangerous drugs without  
21 an appropriate prior examination and a medical indication and/or section 2290.5 for lack of  
22 documented consent to telehealth, as set forth herein:

23 25. Paragraphs 12 through 13 are incorporated herein by reference, as if fully set forth.

24 26. On or about August 17, 2018, Respondent issued two prescriptions (with refills) for  
25 Patient C, a female who resided in NY. Prescription No. 0109563 was for lidocaine 5% and  
26 Prescription No. 0109564 was for diclofenac sodium 3%.

27 27. Respondent has no medical records for Patient C, only a partial list of names of  
28 patients to whom she issued prescriptions that contains the name of Patient C. Respondent has no



1 record of the details of the prescriptions for Patient C and there is no documentation of Patient  
2 C's medical history, the patient's complaint(s), a consent to telehealth, obtaining the patient's  
3 informed consent, and/or of an appropriate physical examination.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct: Gross Negligence, Prescribing Without Appropriate Exam,**  
6 **Lack of Consent for Telehealth re: Patient D)**

7 28. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
8 unprofessional conduct with regard to acts and omissions in the treatment of Patient D under  
9 section 2234(b) for gross negligence and/or section 2242 for prescribing dangerous drugs without  
10 an appropriate prior examination and a medical indication and/or section 2290.5 for lack of  
11 documented consent to telehealth, as set forth herein:

12 29. Paragraphs 12 through 13 are incorporated herein by reference, as if fully set forth.

13 30. On or about March 2, 2018, Respondent issued two prescriptions (with refills) for  
14 Patient D, a male who resided in New York. Prescription No. 0101156 was for lidocaine 5% and  
15 Prescription No. 01091160 was for calcipotriene 0.005%.<sup>4</sup>

16 31. Respondent has no medical records for Patient D, only a partial list of names of  
17 patients to whom she issued prescriptions that contains the name of Patient D. Respondent has no  
18 record of the details of the prescriptions for Patient D and there is no documentation of Patient  
19 D's medical history, the patient's complaint(s), a consent to telehealth, obtaining the patient's  
20 informed consent, and/or of an appropriate physical examination.

21 32. According to other prescribing records, Respondent's Prescription Nos. 101156 and  
22 101160 for Patient D were re-filled on April 16, 2018.

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28 <sup>4</sup> Calcipotriene 0.005% cream is a topical treatment that is used to treat psoriasis. It is  
available only through a prescription.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Gross Negligence, Prescribing Without Appropriate Exam,**  
3 **Lack of Consent for Telehealth re: Patient E)**

4 33. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
5 unprofessional conduct with regard to acts and omissions in the treatment of Patient E under  
6 section 2234(b) for gross negligence and/or section 2242 for prescribing dangerous drugs without  
7 an appropriate prior examination and a medical indication and/or section 2290.5 for lack of  
8 documented consent to telehealth, as set forth herein:

9 34. Paragraphs 12 through 13 are incorporated herein by reference, as if fully set forth.

10 35. On or about August 15 or 16, 2018, Respondent issued two prescriptions for Patient  
11 E, a female born in September 1949 and a resident of New York. Prescription No. 0109255 was  
12 for lidocaine 5% and Prescription No. 0109256 was for diclofenac sodium 3%.

13 36. Respondent has no medical records for Patient E, only a partial list of names of  
14 patients to whom she issued prescriptions that contains the name of Patient E. Respondent has no  
15 record of the details of the prescriptions for Patient E and there is no documentation of Patient E's  
16 medical history, the patient's complaint(s), a consent for telehealth, obtaining the patient's  
17 informed consent, and/or of an appropriate physical examination.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct: Gross Negligence, Prescribing Without Appropriate Exam,**  
20 **Lack of Consent for Telehealth re: Patient F)**

21 37. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
22 unprofessional conduct with regard to acts and omissions in the treatment of Patient F under  
23 section 2234(b) for gross negligence and/or section 2242 for prescribing dangerous drugs without  
24 an appropriate prior examination and a medical indication and/or section 2290.5 for lack of  
25 documented consent to telehealth, as set forth herein:

26 38. Paragraphs 12 through 13 are incorporated herein by reference, as if fully set forth.

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1        39. On or about July 30, 2018, Respondent issued two prescriptions for Patient F, a  
2 female born in August 1945 and a resident of New York. Prescription No. 0106522 was for  
3 lidocaine 5% and Prescription No. 0106523 was for diclofenac sodium 3%.

4        40. Respondent has no medical records for Patient F, only a partial list of names of  
5 patients to whom she issued prescriptions that contains the name of Patient F. Respondent has no  
6 record of the details of the prescriptions for Patient F and there is no documentation of Patient F's  
7 medical history, the patient's complaint(s), a consent to telehealth, obtaining the patient's  
8 informed consent, and/or of an appropriate physical examination.

9        41. According to Respondent's list of prescriptions, on August 29, 2018, she issued  
10 Prescription Nos. 0106522, 0106523, and 0106525 to Patient F.

#### 11                                    **SEVENTH CAUSE FOR DISCIPLINE**

##### 12                    **(Unprofessional Conduct: Failure to Maintain Accurate and Adequate Records:**

##### 13                                    **Patients A through F)**

14        42. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
15 unprofessional conduct under section 2266 for failure to maintain adequate and accurate records  
16 relating to the provision of services to Patients A through F, jointly and severally.

17        43. Paragraphs 12 through 41 are incorporated herein by reference, as if fully set forth.

#### 18                                    **EIGHTH CAUSE FOR DISCIPLINE**

##### 19                    **(Unprofessional Conduct: Repeated Negligent Acts: Patients A through F)**

20        44. Respondent Ahimsa Porter Sumchai, M.D. is subject to disciplinary action for  
21 unprofessional conduct under section 2234(c) for repeated negligent acts relating to acts and  
22 omissions regarding Patients A through F, jointly and severally.

23        45. Paragraphs 12 through 41 are incorporated herein by reference, as if fully set forth.

#### 24                                    **DISCIPLINARY CONSIDERATIONS**

25        46. To determine the degree of discipline, if any, to be imposed on Respondent Ahimsa  
26 Porter Sumchai, M.D., Complainant alleges that on March 19, 2001, in a Decision of a prior  
27 disciplinary action titled *In the Matter of the First Amended Accusation Against Ahimsa Porter*  
28 *Sumchai, M.D.* before the Medical Board of California, in Case Number 03-1998-92728,

1 Respondent's license was surrendered pursuant to a stipulated settlement. The disciplinary matter  
2 involved allegations under section 822 of the Business and Professions Code. Respondent  
3 admitted that her ability to practice her profession safely was impaired because of Post-Traumatic  
4 Stress Disorder. That decision is now final and is incorporated by reference as if fully set forth  
5 herein.

6 47. Complainant further alleges that on November 15, 2005, in a Decision and Order of a  
7 prior disciplinary action titled *In the Matter of the Petition for Reinstatement of Revoked*  
8 *Certificate of Ahimsa Porter Sumchai, M.D.* before the Medical Board of California, in Case  
9 Number 20-2004-156502, Respondent's petition was granted and her license was reinstated and  
10 simultaneously placed on probation for five years with terms and conditions. That decision  
11 became effective on December 15, 2005, is now final and is incorporated by reference as if fully  
12 set forth herein.

13 48. Complainant further alleges that on July 20, 2009, in a Decision of a prior  
14 disciplinary action titled *In the Petition for Termination of Probation of Ahimsa Porter Sumchai,*  
15 *M.D.* before the Medical Board of California, in Case Number 26-2008-193264, Respondent's  
16 petition was denied, but the probation was modified by deleting Condition No. 2 (practice  
17 monitor) and Condition No. 4 (prohibition of practice of emergency medicine/trauma care) with  
18 all other terms remaining in effect. That decision became effective on August 19, 2009, is now  
19 final and is incorporated by reference as if fully set forth herein.

#### 20 PRAYER


21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Medical Board of California issue a decision:

- 23 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 48983,  
24 issued to Respondent Ahimsa Porter Sumchai, M.D.;
- 25 2. Revoking, suspending or denying approval of Respondent Ahimsa Porter Sumchai,  
26 M.D.'s authority to supervise physician assistants and advanced practice nurses;
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1           3.     Ordering Respondent Ahimsa Porter Sumchai, M.D. to pay the costs of investigation  
2 and enforcement of this case and, if placed on probation, to pay the Board the costs of probation  
3 monitoring; and

4           4.     Taking such other and further action as deemed necessary and proper.

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7     DATED:     **APR 29 2022**

  
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WILLIAM P. SIFKA  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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